



SP APPLICATION ACCEPTED: August 25, 2014
VC APPLICATION ACCEPTED: February 7, 2014
ADMINISTRATIVELY MOVED AT APPLICANT'S REQUEST
BOARD OF ZONING APPEALS: September 24, 2014
TIME: 9:00 a.m.

County of Fairfax, Virginia

September 17, 2014

STAFF REPORT

SPECIAL PERMIT SP 2014-LE-186
CONCURRENT WITH VARIANCE VC 2014-LE-004

LEE DISTRICT

APPLICANT: Kenneth E. Miller

OWNERS: Kenneth E. Miller
Jeanette A. Jaeggi

STREET ADDRESS: 5633 Maxine Court, Alexandria, 22310

SUBDIVISION: Clermont, Section 1

TAX MAP REFERENCE: 82-1 ((10)) 2

LOT SIZE: 12,633 square feet

ZONING DISTRICT: R-3

ZONING ORDINANCE PROVISION: 8-923, 18-401

SPECIAL PERMIT PROPOSAL: To permit a fence greater than 4.0 feet in height to be constructed in a front yard of a corner lot.

VARIANCE PROPOSAL: To permit an accessory storage structure and an accessory structure in the front yard of a corner lot containing 36,000 square feet or less.

STAFF RECOMMENDATION: Staff recommends approval of SP 2014-LE-186 to permit a fence greater than 4.0 feet in height in a front yard, and VC 2014-LE-004 for the accessory storage structure and accessory structure with the adoption of the proposed development conditions contained in Appendices 1 and 2.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions, relieve the applicants/owners from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals. A copy of the BZA's Resolution setting forth this decision will be mailed within five days after the decision becomes final.

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

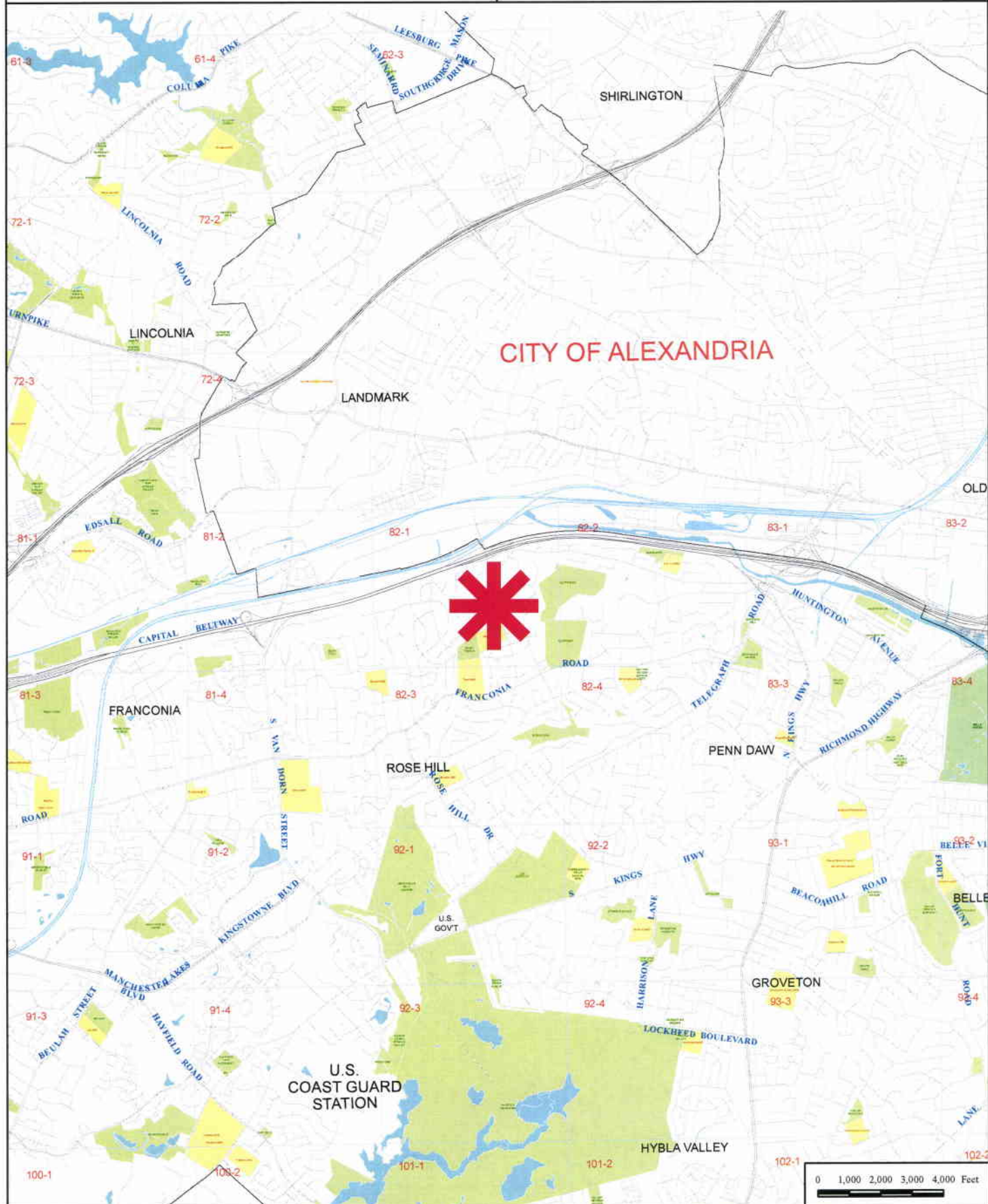
For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505.**



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

KENNETH E MILLER

KENNETH E. MILLER



Special Permit

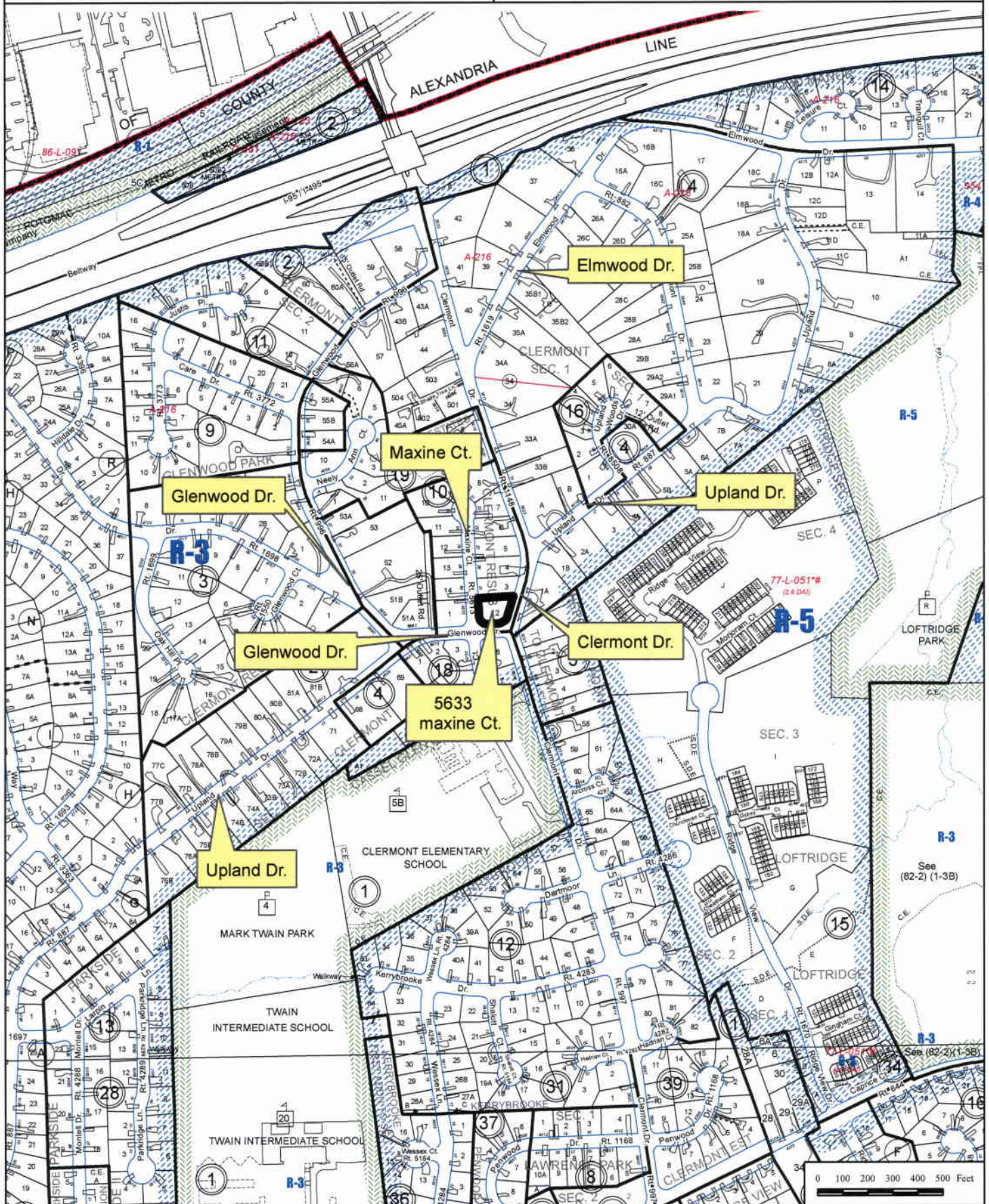
SP 2014-LE-186

KENNETH E MILLER

Variance Application

VC 2014-LE-004

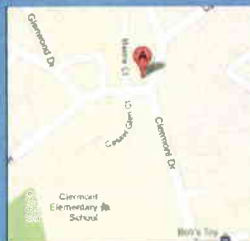
KENNETH E. MILLER



PREPARED BY:

EXACTA

VIRGINIA SURVEYORS, INC.



PROPERTY ADDRESS: 5633 MAXINE COURT

ALEXANDRIA, VIRGINIA 22310

SURVEY NUMBER: 1401.0479

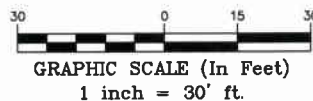
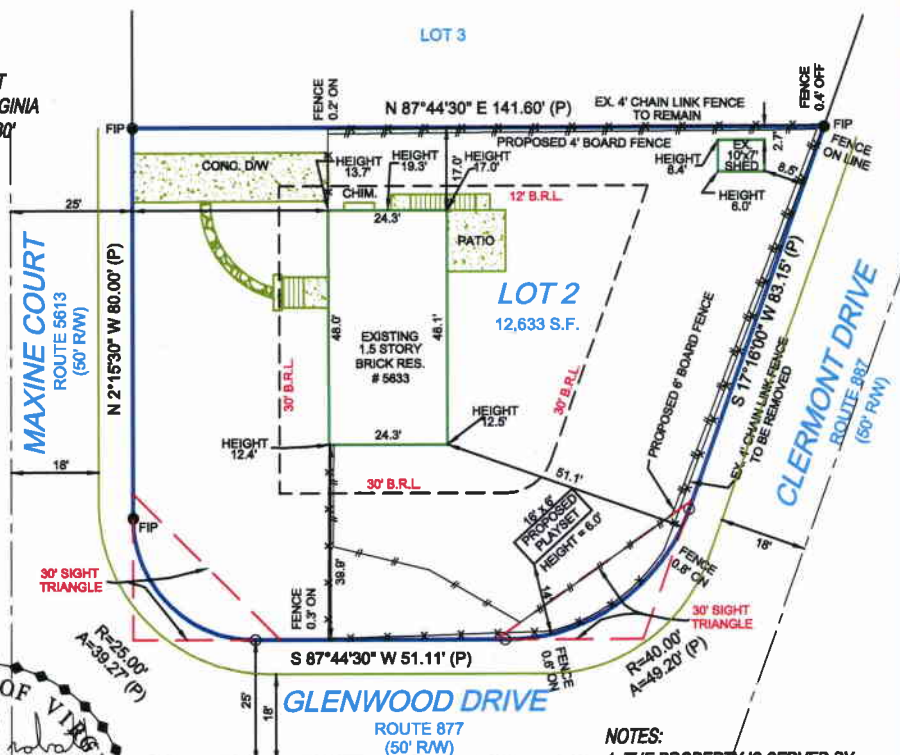
FIELD WORK DATE: 1/15/2014

REVISION HISTORY: (REV 3 8/18/2014) (REV 2 6/20/2014) (REV 1 1/15/2014)

1401.0479
VARIANCE PLAT
LOT 2
SECTION 1, CLERMONT
FAIRFAX COUNTY, VIRGINIA
01-09-2014 SCALE 1"=30'



06-20-2014 ADDED SIGHT TRIANGLES AND MOVED FENCE.
08-18-2014 CHANGES PER CLIENT & COUNTY COMMENTS



- NOTES:
1. THE PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.
 2. THE 6' FENCE WILL BE PLACED IN THE SAME LOCATION AS THE EXISTING CHAIN LINK FENCE, EXCEPT IN THE VICINITY OF THE SIGHT TRIANGLE WHERE THE FENCE WILL FOLLOW ALONG THE SIGHT TRIANGLE.
 3. THE 4' FENCE WILL BE PLACED ADJACENT TO THE EXISTING CHAIN LINK FENCE.

POINTS OF INTEREST:
NONE VISIBLE

CLIENT NUMBER:

DATE: 1/15/2014

BUYER: Ken Miller

SELLER: KEN MILLER

CERTIFIED TO:
KEN MILLER



EXACTA CONTACT

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M 410.458.5160 O 866.735.1916 F 866-744-2882

EXACTA
Virginia Surveyors, Inc.

LB# 0407005699

www.exactaVA.com
P 703.258.0630 • F 703.258.0361
5494 Rodriguez Lane, Haymarket, VA 20169

THE MAP OF SURVEY OF THE HEREON DESCRIBED PROPERTY IS A TRUE AND CORRECT REPRESENTATION OF A SURVEY MADE UNDER THE SUPERVISION AND DIRECTION OF A VIRGINIA LICENSED SURVEYOR AND SAID SURVEY MEETS OR EXCEEDS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYS SET FORTH BY THE VIRGINIA BOARD OF PROFESSIONAL LAND SURVEYORS.

THIS IS A TWO PAGE DOCUMENT. THE ADVICE FOUND ON THE AFFIXED PAGE (PAGE 2 OF 2) IS AN INTEGRAL PART OF THE PLAT.

FENCE HEIGHT VARIANCE



Picture #1: House at 5633 Maxine Court



Picture #2: Chain-link fence facing east on Clermont drive and existing shed



Picture #3: Fence on west front is rusting.

Picture #4: Fence on east side of property. Fence post is split and segments are in disrepair





Picture #16: View of 3-way intersection from back porch facing Clermont Drive. Notice the slope toward adjacent property to the left. The only usable portion of the yard in view is the area toward the fence straight ahead and to the right.



Picture #17: Board and Batten-style fence that we want to replace the chain link fence. Picture from rusticfencescom.

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Department of Planning & Zoning
FEB 07 2014
Zoning Evaluation Division



Picture #13 (Left): Three-way intersection of Clermont Drive and Glenwood Drive. View from stop sign on Clermont facing south. View of intersection is not obstructed by existing or proposed property fence.

Picture #14 (Right): Three-way intersection. View of property from Clermont Drive facing north. Exposure of property from area of parked cars adjacent to Clermont Elementary School.



Picture #15 (Left): Three-way intersection. View from Glenwood Dr. facing Clermont Drive. View from stop sign not obstructed by existing or proposed fence.

SHED REPLACEMENT VARIANCE



Picture #18 (Above):
View of shed in disrepair.
The roof is collapsing
and the doors have
rustied off.



Picture #19 (Right): View
of shed from three-way
intersection at Clermont
Drive and Glenwood
Drive.



Picture #10 (Left): Fence gate on southwest side. Need for cord to keep gate properly closed due to disrepair.

Picture #11 (Below): Fence gate on northwest side. Gate does not close properly. Need for bricks to line bottom to close gaps and keep gate from swinging inward.



Picture #12: Fence on northwest side in disrepair and bent away from foundation. The fence is collapsing inward.

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Picture #7 (Left): Fence on east side. Need for supplemental wiring to keep fence attached to post.



Picture #8 (Right): Fence on east side. Fence bent and pulled away from post. Need supplemental post to keep fencing secured.



Picture #9 (Left): Fence on southwest corner. Fence bent and pulled away from post.

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Picture #5: View of back of house from Clermont. House is exposed to traffic parked along street and driving by.



Picture #6: View of adjacent neighborhood from west front of property. New residential construction is improving property value in the area.

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Zoning Evaluation Division



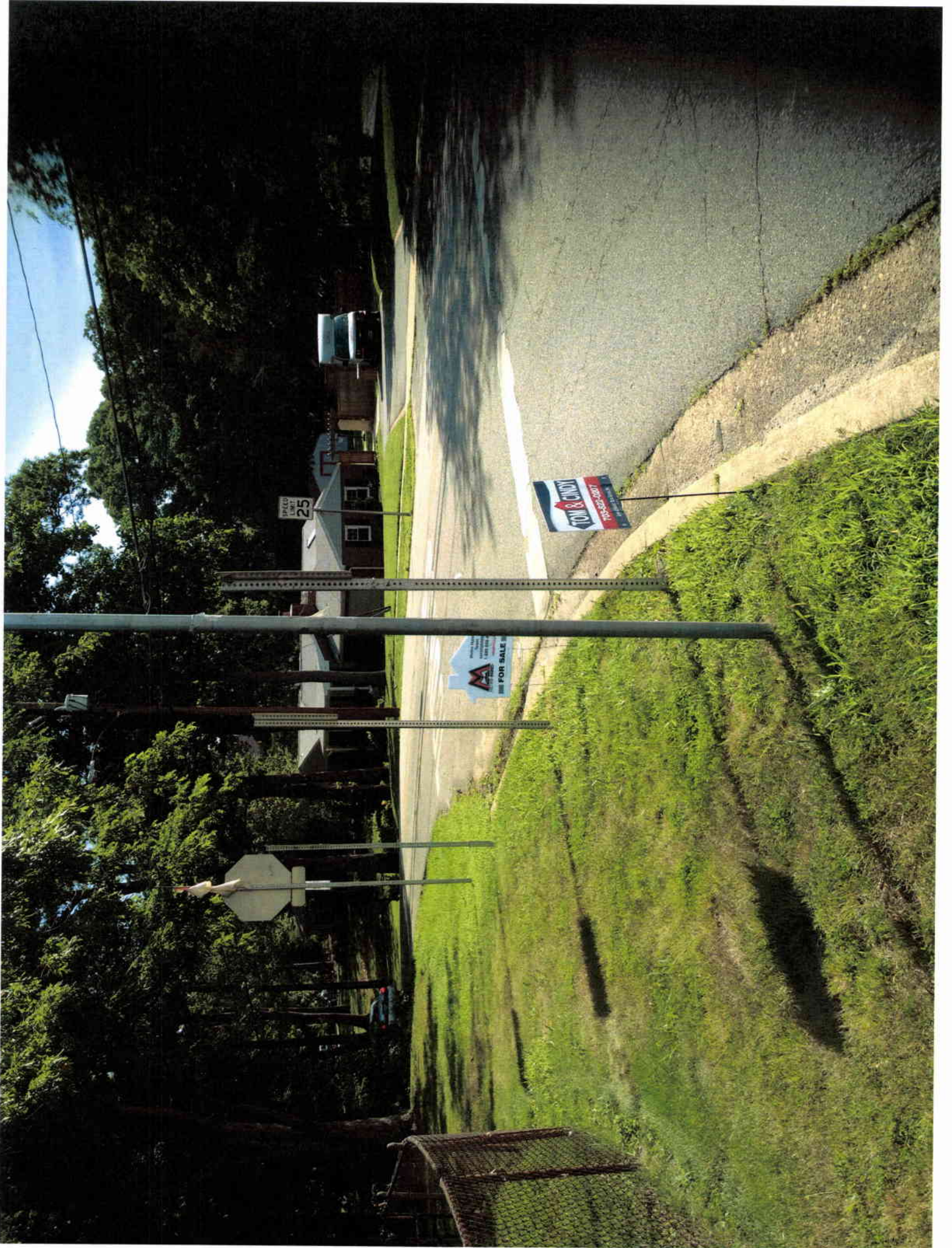
Picture #20 (Left): View of shed roof that is collapsing.

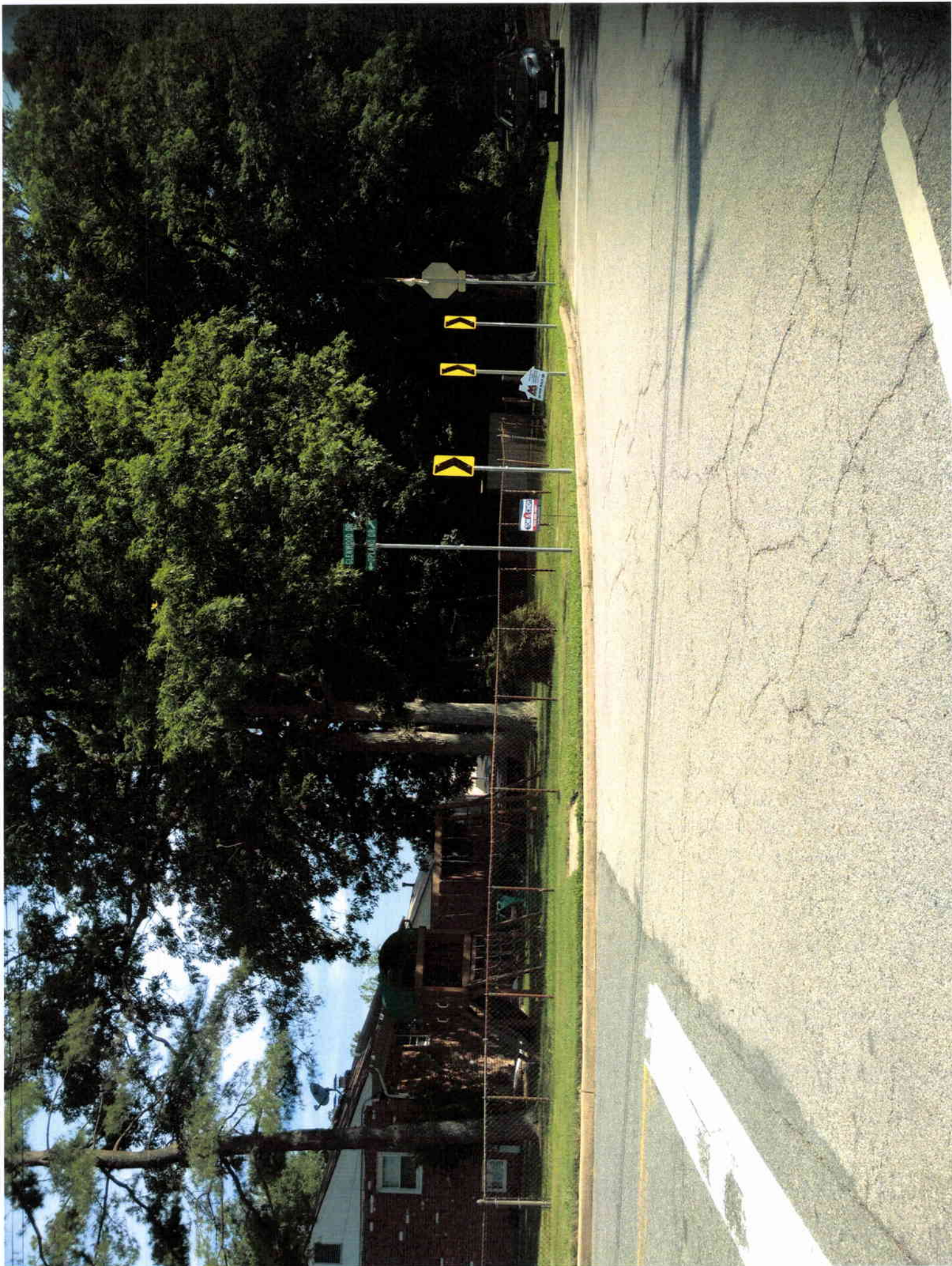
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Department of Planning & Zoning
FEB 07 2014
Zoning Evaluation Division

Picture #21 (Right): View of northeast side of property (facing east), which is the only area permitted by ordinance to locate a shed. Notice slope that would require landscaping to make ground suitable for a shed.



Picture #22 (Left): View of northeast side of property (facing west), which is the only area permitted by ordinance to locate a shed. Notice slope that would require landscaping to make ground suitable for a shed.





SPECIAL PERMIT REQUEST

The applicant is seeking a special permit to allow a fence greater than 4.0 feet in height to be constructed in a front yard of a corner lot. The fence is proposed to be 6.0 feet in height and made of wood and located in the front yards along Glenwood Drive and Clermont Drive.

VARIANCE REQUEST

The applicant is seeking a variance to allow an accessory storage structure (shed) and accessory structure (play set) in the front yard of a corner lot containing 36,000 square feet or less. A new shed would be constructed in the same location as the existing shed and would be under 8.5 feet in height and less than 200 square feet in area. The existing playset is 10 feet in height and covers about 120 square feet. No changes to the playset are proposed.

A copy of the special permit and variance plat titled, "Variance Plat, Lot 2, Section 1, Clermont " as prepared by John Krobath, L.S. of Exacta Virginia Surveyors Inc., dated January 14, 2014, and as revised through August 18, 2014, is included in the front of the staff report.

CHARACTER OF THE SITE AND SURROUNDING AREA

The 12, 633 square foot lot contains a 1 ½ story single family dwelling. The property has as concrete driveway, walkway and stoop to the west of the dwelling. Stairway access to the basement is located to the north of the dwelling. A patio, shed and playset are located to the east of the dwelling. A 4 foot high chain link fence exists on a portion of the northern property line and a portion of the southern property line as well as along the eastern property line.

The property has three front yards; one along Maxine Court, one along Glenwood Drive and one along Clermont Drive.

The property is relatively flat and contains a few mature trees located in the front yard along Glenwood Drive.



The subject property is south of the Capital Beltway and west of Clermont Drive. As illustrated above, the subject property and surrounding parcels are zoned R-3 and developed with single family detached dwellings.

BACKGROUND

Fairfax County Tax Records indicate that the single family dwelling was originally constructed in 1966 and was purchased by the applicant in 2011.

County records contain no building permits on this property pertaining to the special permit and variance cases.

Records indicate that no other applications related to variances or special permits have been heard by the Board of Zoning Appeals (BZA) in the surrounding area.

ANALYSIS

Comprehensive Plan Provisions

Plan Area:	Area IV, Rose Hill Planning District
Planning Sector:	Bush Hill Community Planning Sector (RH-2)
Plan Map:	Residential, 2-3 dwelling units/acre (du/ac)

Zoning Ordinance Requirements- Special Permit

The existing single family dwelling on site currently meets all bulk regulations for the R-3 Zoning District.

- Sect. 8-006 General Special Permit Standards
- Sect. 8-903 Group 9 Standards
- Sect. 8-923 Provisions for Increase in Fence and/or Wall Height in Any Front Yard

The special permit is subject to sections of the Zoning Ordinance as outlined below. Subject to development conditions, the special permit must meet these standards.

Sect. 8-923 Standards	Provision met?	
	YES	NO
1. The maximum fence and/or wall height shall not exceed six (6) feet.	X	
2. The fence and/or wall shall meet the sight distance requirements contained in Sect. 2-505.	X	
3. The BZA shall determine that the proposed fence and/or wall height increase is warranted based upon such factors to include, but not limited to, the orientation and location of the principal structure on the lot, the orientation and location of nearby offsite structures, topography of the lot, presence of multiple front yards, and concerns related to safety and/or noise.	X	
4. The BZA shall determine that the proposed fence and/or wall height increase will be in character with the existing on-site development and will be harmonious with the surrounding offsite uses and structures in terms of location, height, bulk scale and any historic designations.	X	
5. The BZA shall determine that the proposed fence and/or wall height increase shall not adversely impact the use and/or enjoyment of other properties in the immediate vicinity.	X	
6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including but not limited to imposition of landscaping or fence and/or wall design requirements.	X	
7. Submission requirements met	X	
8. Architectural depictions of the proposed fence and/or wall to include height, building materials and any associated landscaping shall be provided.	X	

Zoning Ordinance Requirements- Variance

- *Sect. 18-404 Required Standards for Variances*

Summary of Zoning Ordinance Provisions

This variance application must satisfy all of the nine (9) enumerated requirements contained in Sect. 18-404, Required Standards for Variances. If the BZA determines that a variance can be justified, it must then decide the minimum variance, which would afford relief as set forth in Sect. 18-405. A copy of these provisions is included as Appendix 4.

1. *That the subject property was acquired in good faith.*

From staff's evaluation of the Applicants statement of justification and Fairfax County Department of Tax Administration records, staff believes that the property was acquired in good faith.

2. *That the subject property has at least one of the following characteristics:*

- A. *Exceptional narrowness at the time of the effective date of the Ordinance;*

The width of the lot exceeds the required lot width within the R-3 District; therefore the lot is not exceptionally narrow.

- B. *Exceptional shallowness at the time of the effective date of the Ordinance;*

The lot has a minimum depth of at least 80 feet, which is sufficient to accommodate a single family dwelling; therefore the lot is not exceptionally shallow.

- C. *Exceptional size at the time of the effective date of the Ordinance;*

The total area of the lot of 12,633 square feet exceeds the required minimum lot area of 10,500 square feet; therefore the lot is not exceptionally small.

- D. *Exceptional shape at the time of the effective date of the Ordinance;*

The lot is roughly rectangular in shape, and can accommodate a single family dwelling.

- E. *Exceptional topographic conditions;*

The majority of the site is relatively flat, and does not have exceptional topographic conditions.

F. An extraordinary situation or condition of the subject property; or

Staff research found that the lot was created by Clermont subdivision before 1960 and contained three front yards. At a later date, the larger original lot was subdivided into smaller lots, including the property that exists today which also has three front yards. The location of the property does not present a challenge to the construction of a home, but it does present a challenge as the Zoning Ordinance only accommodates properties with accessory structures in a front yards with lots over 36,000 square feet. An accessory structure such as playset is a feature normally associated with a single family dwelling, however due to the unusual setbacks on the lot, only one yard along the northern property line is permitted to have this type of structure. Since the house must be located adjacent to the side (rear) yard setback, no area remains to accommodate either accessory structure. The variance application provides relief to locate an accessory structure in a front yard while the proposed fencing mitigates any potential impacts on neighboring properties.

G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

a. N/A

3. *That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.*

A situation or condition where property has three front yards does recur at the property directly across Glenmont Drive from the subject property; however, this particular lot design is unusual and under today's standards would not normally occur except perhaps under the provisions of a planned district, where accommodations for accessory structures could be proffered.

4. *That the strict application of this Ordinance would produce undue hardship.*

The strict application of the Ordinance would result in undue hardship to the applicant as the only area in which to place an accessory structure not in a front yard is a 24 by 17 square foot area (408 square feet) immediately to the north of the dwelling. As the property contains 12,633 square feet, only 408 square feet (along with the footprint of the house) is not located in a

front yard. The existing playset at 10 feet in height and the proposed shed at 8.5 feet in height would both have to be located in the side yard to be considered by-right or to be approved with a special permit application. The current location of the shed and the playset are in the functional rear yard of the property.

Some properties with accessory structures in two front yards are provided relief through the Zoning Ordinance by Sect. 10-104. Properties with two adjacent front yards are considered corner lots. This provision allows accessory storage structures on corner lots to take minimum required side yard setbacks for the minimum required rear yard setbacks. This allows the property owner additional space in the rear yard in which to place accessory structures. There are no specific provisions that provide relief for properties with three front yards.

5. *That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.*

A situation or condition where property has three front yards does recur only at the property directly across Glenmont Drive from the subject property. Any placement of accessory structures in the front yard would also require a variance application and approval.

6. *That:*

- A. *The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property, or*
- B. *The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.*

The strict application of the Zoning Ordinance would create a clearly demonstrable hardship of three front yards on one property. The front yards, as described by the Zoning Ordinance, prohibit the location of any accessory structures except in the front yard. The property has three front yards and one small side yard which limit or prohibit the amount of space to locate accessory structures.

7. *That authorization of the variance will not be of substantial detriment to adjacent property.*

The applicant proposes no construction that will be of substantial detriment to adjacent properties; any detriment would be mitigated by the proposed fencing.

8. *That the character of the zoning district will not be changed by the granting of the variance.*

It is staff's belief that the granting of the variance would not change the general character of the zoning district in the neighborhood. Surrounding properties contain rear yard fences and playsets associated with single family dwellings.

9. *That the variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.*

Staff believes the variance application is in harmony with the intended purposes of this Ordinance and will not be contrary to public interest.

URBAN FORESTRY COMMENTS

Staff from Urban Forestry Management Division (UFMD) submitted a memorandum dated May 15, 2014, regarding this property and had a number of comments relating to tree protection during the installation of the fences (Appendix 5). Proposed Development Conditions 3 and 4 address these issues (Appendix 1 of the staff report).

CONCLUSIONS

Special Permit

Staff believes that the request is in conformance with the applicable Zoning Ordinance provisions with the implementation of the proposed Development Conditions contained in Appendix 1 of the staff report.

Variance

Staff believes that the variance request meets the standards contained in Section 18-404 of the Zoning Ordinance with the implementation of the proposed development conditions contained in Appendix 2 of the staff report.

RECOMMENDATIONS

Staff recommends approval of SP 2014-LE-186 for a fence greater than 4 feet in a front yard, and VC 2014-LE-004 for the accessory storage structure and accessory structure in a front yard, with adoption of the Proposed Development Conditions contained in Appendices 1 and 2 of the staff report.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions, relieve the applicants/owners from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals.

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

APPENDICES

1. Proposed Development Conditions for Special Permit
2. Proposed Development Conditions for Variance
3. Applicant's Affidavits
4. Applicant's Statements of Justification
5. Urban Forestry Memo dated May 15, 2014
6. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS**SP 2014-LE-186****September 17, 2014**

If it is the intent of the Board of Zoning Appeals to approve SP 2014-LE-186 located at Tax Map 82-1 ((10)) 2 to permit allow a fence greater than 4.0 feet in height to be constructed in a front yard of a corner lot, under Sect(s). 8-923 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the final inspection. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location of the fence as shown on the plat titled, "Variance Plat, Lot 2, Section 1, Clermont " as prepared by John Kroboth, L.S., of Exacta Virginia Surveyors Inc., dated January 14, 2014 and as revised through August 18, 2014, as submitted with this application and is not transferable to other land.
3. All fencing shall be located outside of the structural root zone of trees. The structural root zone is defined as a radius of three (3) feet from the base of the tree for each foot of trunk diameter measured at 4.5 feet above existing grade.
4. Where roots one inch or greater in diameter are encountered during any excavation, they shall be cut cleanly at the limits of the excavation. Cuts shall be made using a handsaw or lopping shears.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

PROPOSED DEVELOPMENT CONDITIONS

VC 2014-LE-004

September 17, 2014

1. This variance is approved to permit the accessory storage structure (shed) and the accessory structure (playset) in the front yards of the property as shown on the plat titled "Variance Plat, Lot 2, Section 1, Clermont " as prepared by John Krobath, L.S. of Exacta Virginia Surveyors Inc., dated January 14, 2014 and as revised through August 18, 2014, as submitted with this application and is not transferable to other land.
2. The proposed shed shall be no larger than 8.5 feet in height and less than or equal to 200 square feet in area.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.

Application No.(s): SP 2014 - LE - 186
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 8/21/14
 (enter date affidavit is notarized)

126792

I, Kenneth E. Miller, do hereby state that I am an
 (enter name of applicant or authorized agent)

(check one) ☒ applicant
☐ applicant's authorized agent listed in Par. 1(a) below

and that, to the best of my knowledge and belief, the following is true:

- 1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS, and LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE,**** each **BENEFICIARY** of such trust, and all **ATTORNEYS and REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
Kenneth E. Miller	5633 Maxine Court, Alexandria, VA 22310	Applicant/Title Owner
Jeanette A. Jaeggi	5633 Maxine Court, Alexandria, VA 22310	Applicant/Title Owner

(check if applicable) ☐ There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

Application No.(s): SP 2014-LE-186
(county-assigned application number(s), to be entered by County Staff)

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 8/21/14
(enter date affidavit is notarized)

126792

1(b). The following constitutes a listing*** of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include **SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE INVESTMENT TRUSTS** herein.)

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

N/A

DESCRIPTION OF CORPORATION: (check one statement)

- ☐ There are 10 or less shareholders, and all of the shareholders are listed below.
- ☐ There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- ☐ There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)

(check if applicable) ☐ There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment 1(b)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s): SP 2014-LE - 186
(county-assigned application number(s), to be entered by County Staff)

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 8/21/14
(enter date affidavit is notarized)

126792

- 1(c). The following constitutes a listing*** of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code)

N/A

(check if applicable) ☐ The above-listed partnership has no limited partners.

NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. **General Partner, Limited Partner, or General and Limited Partner**)

(check if applicable) ☐ There is more partnership information and Par. 1(c) is continued on a "Special Permit/Variance Attachment to Par. 1(c)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until: (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s): SP 2014 - LE - 186
(county-assigned application number(s), to be entered by County Staff)

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

126792

DATE: 8/21/14
(enter date affidavit is notarized)

1(d). One of the following boxes **must** be checked:

☐ In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land:

☒ Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (**NOTE:** If answer is none, enter "NONE" on the line below.)
NONE

(check if applicable) ☐ There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

Application No.(s): SP 2014-LE-186
(county-assigned application number(s), to be entered by County Staff)

Page Five

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 8/21/14
(enter date affidavit is notarized)

126792

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)
NONE

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) ☐ There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

(check one)

☒ Applicant

☐ Applicant's Authorized Agent

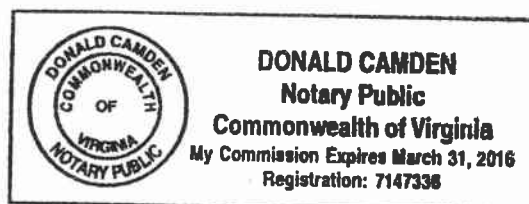
Kenneth E. Miller

(type or print first name, middle initial, last name, and title of signer)

Subscribed and sworn to before me this 21 day of August, 2014, in the State/Comm. of Virginia, County/City of Fairfax.

My commission expires: March 31, 2016

[Signature]
Notary Public



Application No.(s):

VC 2014-LE-004
(County-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 2/5/14
(enter date affidavit is notarized)

124312

I, Kenneth E. Miller, do hereby state that I am an
(enter name of applicant or authorized agent)

(check one) ☒ applicant
☐ applicant's authorized agent listed in Par. 1(a) below

and that, to the best of my knowledge and belief, the following is true:

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS, and LESSEES** of the land described in the application, and, if any of the foregoing is a **TRUSTEE***, each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
Kenneth E. Miller	5633 Maxine Ct, Alexandria, VA 22310	Applicant/Title Owner
Jeanette A. Jaeggi	5633 Maxine Ct, Alexandria, VA 22310	Applicant/Title Owner

(check if applicable) ☐ There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

* List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

Application No.(s):

VC 2014-LE-004

(County-assigned application number(s), to be entered by County Staff)

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 2/5/14
(enter date affidavit is notarized)

124312

1(b). The following constitutes a listing** of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE INVESTMENT TRUSTS herein.)

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

N/A

DESCRIPTION OF CORPORATION: (check one statement)

- ☐ There are 10 or less shareholders, and all of the shareholders are listed below.
- ☐ There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- ☐ There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)

N/A

(check if applicable) ☐ There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment 1(b)" form.

**** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER or LESSEE of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed. Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.**

Application No.(s):

VC 2014-LE-004

(County-assigned application number(s), to be entered by County Staff)

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE:

2/5/14

(enter date affidavit is notarized)

124312

- 1(c). The following constitutes a listing** of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code)

N/A

(check if applicable) ☐ The above-listed partnership has no limited partners.

NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. **General Partner, Limited Partner, or General and Limited Partner**)

N/A

(check if applicable) ☐ There is more partnership information and Par. 1(c) is continued on a "Special Permit/Variance Attachment to Par. 1(c)" form.

**** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until: (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed. Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.**

Application No.(s):

VC 2014-LE-004

(County-assigned application number(s), to be entered by County Staff)

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE:

2/5/14

(enter date affidavit is notarized)

124312

1(d). One of the following boxes must be checked:

☐ In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE** of the land:

☒ Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on the line below.)

NONE

(check if applicable) ☐ There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

Application No.(s):

VC 2014-LE-004

(County-assigned application number(s), to be entered by County Staff)

Page Five

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE:

2/5/14

(enter date affidavit is notarized)

124312

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)

NONE

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) ☐ There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE** of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

(check one)

☒ Applicant

☐ Applicant's Authorized Agent

Kenneth E. Miller, Applicant
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 5 day of February, 2014, in the State/Comm. of Virginia, County/City of Fairfax.

My commission expires:

June 30, 2017

Notary Public



Christopher J. Jackson
Notary Public
Commonwealth of Virginia
My Commission Expires June 30, 2017
Registration: 345154

T 571-527-0560

FROM THE DESK OF
KEN MILLER & JEANETTE JAEGGI

E KMILLERWDC@ME.COM

RECEIVED
Department of Planning & Zoning**FEB 07 2014**

Zoning Evaluation Division

To: County of Fairfax Department of Planning and Zoning

Re: Zoning Variance Justification

Date: February 7, 2014

We write to request a two-part zoning variance to our residential property located at 5633 Maxine Court, Alexandria, VA, 22310. The first variance is to replace the existing four (4) foot chain-link fence with a six (6) foot board and batten wood privacy fence. The second variance is to permit the replacement of an existing shed, the erection of which, to our best knowledge, pre-dates the effective date of current zoning regulation, August 14, 1978. Both variances serve primarily to improve the safety and security of our family and beautify the existing property, which was not adequately maintained prior to our purchase on December 19, 2011. Furthermore, it is our determination that both variance requests comply with all nine (9) required standards for a variance as set forth in Section 18-404 of the Zoning Ordinance.

The following is a detailed explanation of how each variance request, beginning with our priority variance request to replace the existing fence, meets the 9 (nine) required standards for a variance.

Variance #1: Replace Existing Fence with 6 (Six) Ft Privacy Fence

Our priority variance request is to replace the existing chain-link fence with a six (6) foot board and batten wood privacy fence (pictures 2 & 17, respectively). The new fence with increased height serves to improve the safety and security of our family, including our two young daughters, Anna (3) and Paige (1), and our third child expected in June 2014. The current fence is in disrepair and does not provide adequate security between our property and the bordering streets. Our house was built in 1966 and the fence was contemporaneously installed, which makes the fence approximately 40-45 years old. The fence is rusted, bent and pulled away from the posts, creating a dangerous condition to walk or play along it (Pictures 3, 4, 7-12). The fence needs to be replaced for beautification reasons alone, but raising the height to six (6) feet also provides for more security while maintaining curb appeal without obstructing any line of sight at the intersections.

Standard 1 - Property Acquired in Good Faith

We acquired the property on December 19, 2011 from the previous owners through a third-party relocation management company, Cartus Corporation. The settlement agent was Mid-Atlantic Settlement Services (Vienna, Virginia) and the Deed of Trust was drafted by Intercoastal Mortgage Company (Fairfax, Virginia). The Deed was notarized by Mr. William H. Burkart (Registra

5633 MAXINE CT ALEXANDRIA, VA 22310

tion #7298444), Notary Public, Commonwealth of Virginia. The FHA case number is 548-5196560-703.

Standard 2 - Property Subject to Extraordinary Situation or Condition

Our property is zoned R-3 Residential District, Three Dwelling Units/Acre and is a corner lot; however, it is a corner lot with frontage on three streets (Maxine Court, Clermont Drive, and Glenwood Drive). Therefore, our property has three front yards, which significantly limits our ability to make any changes. The attached drawing (Exhibit 1) from the Fairfax County Department of Planning and Zoning shows the extent to which nearly our entire property is considered a front yard. The only area that is not considered a front yard is shaded pink, which is characterized by a substantial slope down toward the adjacent property. It would require costly landscaping to make the area suitable for use.

Furthermore, our property is subject to a relatively high volume of traffic for a residential area. The intersection of Glenwood Drive and Clermont Drive is an access point to neighborhoods to the east and west of our house and between Franconia Road and the I-495 Beltway. Clermont Drive is often used as a short-cut for traffic traveling between Franconia Road and Telegraph Road. In addition, Clermont Elementary School is located one block south of our property. During school start and dismissal times and other school activities there is heavy traffic and cars are parked along the streets bordering our property.

Finally, our property is along a migratory path for deer, which frequently traverse our property and have been known to jump our fence. The poor condition of the fence also allows other wildlife to get into our property including raccoons and a fox. A six foot fence would make it more difficult for wildlife to access our property, creating a safer area for our children and dog.

Standard 3 - The Non-Recurring Nature of Condition or Situation

This is a one-time variance request that enables us to install a wood fence, which has a 25-year life span. By the end of the fence life, our children will be grown and the need to protect them will be lessened. Therefore, we do not anticipate needing a new variance to replace the fence at the end of its life span.

Standard 4 - Strict Application of Ordinance would Produce Undue Hardship

Strict application of ordinance would produce undue hardship for reasons of safety and security risks to our children and property. Since our property faces public streets on three sides, we are unable to allow our children anywhere on the property without direct adult supervision. There is also no location that allows you to see the entire fenced portion of the yard, meaning that an adult must accompany our children around the yard to ensure their safety. Finally, the exposed yard does not provide any privacy for our family (Pictures 5 & 16). Passers-by can see into our

house and therefore track our routines throughout the day from any of the three streets bordering our property without being noticed.

Our safety and security concerns and the need for constant supervision of our children while outside is reinforced by two incidents that occurred since we moved in. In January 2012, a man was reported approaching school-age children at the intersection of Glenwood Dr. and Clermont Drive at the corner of our property and adjacent to the elementary school. This report increased police presence for several days until it was resolved; however it proved how vulnerable our children are anywhere in our yard and how easy it would be for a perpetrator to park along that intersection during school times to prey on children.

We were alerted of another incident (Exhibit 2) in February 2013 by our neighborhood association that there was a repeat offense of a peeping tom outside the bedroom of a neighbor's house on Clermont Drive. To the best of our knowledge this incident remains unresolved. It is frustrating and unacceptable to not have an ordinary level of confidence in the safety and security of our family and property, and to not be able to take reasonable measures to remedy our concerns.

Standard 5 - Undue Hardship Not Shared Generally by Other Properties in the Same Zoning District and the Same Vicinity.

To the best of our knowledge, there are no other homes/properties in our zoning district that (1) are corner lots bordering three intersecting streets; and (2) have no usable side yard or area set far enough back from the street to provide reasonable privacy. Furthermore, since there are many homes in the surrounding neighborhoods that have multiple front yards, but have privacy fences six feet or higher, our six foot privacy fence will not be an anomaly.

Standard 6 - The Strict Application of the Zoning Ordinance would Unreasonably Restrict All Reasonable Use

The strict application of the zoning ordinance would effectively prevent us from having a suitable backyard and therefore we could not reasonably use the yard for ordinary backyard activities, including but not limited to a safe recreational place for our children and an appropriately private space for leisure and entertainment.

Standard 7 - The Authorization of the Variance will not be of Substantial Detriment to Adjacent Property.

The variance will not be of any detriment to adjacent property. The attached petition signed from our surrounding neighbors indicates that they are aware and supportive of our plans to erect a privacy fence on our property. Furthermore, we have discussed the fence with our next door neighbor and have decided to keep the fence height between our properties at four feet so as to maintain openness and line of sight between neighbors. The purpose of the fence is strictly to

beautify the property and provide for reasonable privacy, security, and safety on the three sides facing the main roads.

Standard 8 - The Character of the Zoning District will not be Changed by the Granting of the Variance.

We believe the character of the zoning district will be improved by the erection of a new fence. While the surrounding neighborhood is decades old, there is an increasing amount of new and higher priced residential construction in the area that accentuates the disrepair of our current fence (Picture 6). Furthermore, most of the chain link fencing throughout the neighborhood has already been removed or replaced with wood fencing.

Standard 9 - The Variance will be in Harmony with the Intended Spirit and purposes of this Ordinance and will not be Contrary to the Public Interest.

We believe that the variance will be in harmony with the Intended Spirit and purposes of this Ordinance as defined by the 15 criteria in the Constitution of the Ordinance, Article I, Part 2. Specifically, a variance for a six (6) foot privacy fence is consistent with the first two criteria: (1) to create and maintain conditions under which people and their environment can exist in a productive and enjoyable harmony while fulfilling the social, economic and other requirements of present and future generations; and (2) to facilitate the creation of a convenient, attractive and harmonious community; to provide for adequate light, air, convenience of access and safety from fire, flood, crime and other dangers; and to reduce or prevent congestion in the public streets (emphasis added).

Finally, the construction of a privacy fence will not be contrary to the public interest, specifically as it pertains to the three-way intersection at Clermont Drive and Glenwood Drive. The new fence will not obstruct line-of-sight from any posted stop sign. Pictures 13, 14, & 15 show that from each point of the intersection, a driver or pedestrian has clear line of sight of the other intersection points. A fence, regardless of height, does not obstruct the view of the intersection.

Conclusion:

When we decided to purchase 5633 Maxine Ct in October 2011, we were attracted to the character of the house, the convenient location, and the attractive neighborhood. The condition of the fence and the exposure to the surrounding streets were the primary negatives that we knew we would need to address as our family grew. It was not disclosed to us, nor do we believe the previous owners were aware, that zoning determined our property as having three front yards, thereby significantly limiting the cosmetic and security improvements that we need to make for our family and increase our property value. We respectfully request a positive ruling on this variance.

Variance #2: Replacement of Existing Shed

Our secondary variance is to permit the construction of a new shed to replace our existing shed that is in disrepair. The existing shed, to the best of our knowledge pre-dates the current zoning regulation of August 1978. It is a seven (7) feet by ten (10) feet standard aluminum shed that is rusted and collapsing (Pictures #18-20). Given the design of our house, which includes neither a functional basement nor garage, we need basic storage space for lawn equipment and miscellaneous/outdoor tools. We request a variance to build a new shed of the same size and on the existing footprint as the current shed (Picture #23).

Standard 1 - Property Acquired in Good Faith

We acquired the property on December 19, 2011 from the previous owners through a third-party relocation management company, Cartus Corporation. The settlement agent was Mid-Atlantic Settlement Services (Vienna, Virginia) and the Deed of Trust was drafted by Intercoastal Mortgage Company (Fairfax, Virginia). The Deed was notarized by Mr. William H. Burkart (Registration #7298444), Notary Public, Commonwealth of Virginia. The FHA case number is 548-5196560-703.

Standard 2 - Property Subject to Extraordinary Situation or Condition

Our property is zoned R-3 Residential District, Three Dwelling Units/Acre and is a corner lot; however, it is a corner lot with frontage on three streets (Maxine Court, Clermont Drive, and Glenwood Drive). Therefore, our property has three front yards, which significantly limits our ability to alter our property. The attached drawing (Exhibit 1) from the Fairfax County Department of Planning and Zoning shows the extent to which nearly our entire property is considered a front yard. The only area that is not considered a front yard is shaded pink, which is characterized by a substantial slope down toward the adjacent property. It would require costly landscaping to make the area suitable for use.

According to zoning ordinance, a shed cannot be located on property considered to be a front yard. To the best of our knowledge, the current shed pre-dates the current zoning ordinance and we have no record of any variance that previous owners may have received. Unfortunately, due to the zoning ordinance, we cannot replace the shed without a variance, nor can we reasonably relocate the shed anywhere on the property without incurring significant cost due to the slope of the side yard on the north side of the house.

Furthermore, our house is ranch-style with a finished basement that was remodeled by previous owners to provide additional living quarters. The house also does not have a garage. There is no suitable space with access to the outside to store ordinary shed-appropriate items.

Standard 3 - The Non-Recurring Nature of Condition or Situation

This is a one-time variance request to permit us to replace an existing shed. Notwithstanding an Act of God, there is no expectation of this situation recurring. We anticipate the new shed will last as long we are living in the house.

Standard 4 - Strict Application of Ordinance would Produce Undue Hardship

The strict application of this ordinance would produce undue hardship. We are aware that technically we are required to remove the shed from its current location. Without a shed (and without a garage) we have no reasonable space to store lawn equipment and other tools, many of which are dangerous for children to be around. A shed creates a safe and secure location to store items not suitable for inside a house.

The only section of our property that the ordinance permits a shed requires significant and costly landscaping due the slope of the property and the resulting run-off rainwater toward the adjacent property (Pictures #21 & #22).

Standard 5 - Undue Hardship Not Shared Generally by Other Properties in the Same Zoning District and the Same Vicinity.

To the best of our knowledge, there are no other homes/properties in our zoning district that (1) are corner lots bordering three intersecting streets; and (2) have no usable side yard or area set far enough back from the street to provide reasonable space for a shed. Furthermore, properties in the surrounding neighborhoods, regardless of whether or not the section of property is considered a front yard, have sheds or other storage solutions, such as a garage.

Standard 6 - The Strict Application of the Zoning Ordinance would Unreasonably Restrict All Reasonable Use

If we cannot replace the existing shed or have to remove it due to zoning violation, it would create an unreasonable restriction on our ability to use our property, especially taking into account the inconspicuous location of the shed. We would be forced to either spend for costly landscaping to make the small section of property that is not considered a front yard suitable for a shed or store lawn equipment and dangerous tools inside the house, which would require us to track them through our living area for each use.

Standard 7 - The Authorization of the Variance will not be of Substantial Detriment to Adjacent Property.

The variance will have no detriment to adjacent properties. To the contrary, replacing the shed will beautify the property and remove an unattractive structure.

Standard 8 - The Character of the Zoning District will not be Changed by the Granting of the Variance.

The character of the zoning district will not be changed. We would be replacing an existing structure that has been there for decades using the same footprint. Furthermore, many surrounding properties also have shed or storage solutions in their back yard.

Standard 9 - The Variance will be in Harmony with the Intended Spirit and purposes of this Ordinance and will not be Contrary to the Public Interest.

We believe that the variance will be in harmony with the Intended Spirit and purposes of this Ordinance as defined by the 15 criteria in the Constitution of the Ordinance, Article I, Part 2. Specifically, a variance for a new shed is consistent with the first two criteria: (1) to create and maintain conditions under which people and their environment can exist in a productive and enjoyable harmony while fulfilling the social, economic and other requirements of present and future generations; and (2) to facilitate the creation of a convenient, attractive and harmonious community; to provide for adequate light, air, convenience of access and safety from fire, flood, crime and other dangers; and to reduce or prevent congestion in the public streets (emphasis added).

Conclusion:

The existing shed is in disrepair and collapsing. It is an eye-sore that is noticeable due to its poor condition. We are seeking to replace the shed with a new wooden shed of the same size and footprint, which will significantly beautify the property. Furthermore, if our primary variance for increased fence height is approved you will not even be able to see the shed from the street.

We respectfully request an affirmative ruling for both variances and appreciate the time and attention of the Fairfax County Board of Zoning Appeals to this request. Please do not hesitate to contact us if you have any questions or need additional information regarding this variance request.

Sincerely yours,



Ken Miller & Jeanette Jaeggi (property owners)




County of Fairfax, Virginia

MEMORANDUM

DATE: May 15, 2014

TO: Laura Gumkowski, Staff Coordinator
Department of Planning and Zoning

FROM: Samantha Wangsgard, Urban Forester II
Forest Conservation Branch, DPW 

SUBJECT: 5633 Maxine Court, Alexandria 22310; VC 2014-LE-004

I have reviewed the above referenced Application for a Variance and associated plat of the subject property, stamped as received by the Zoning Evaluation Division on February 7, 2014. The following comments and recommendations are based on this review and a site visit conducted on May 5, 2014.

1. **Comment:** A general note explaining that fencing should be located far enough from the trunk of nearby trees to minimize impacts to structural roots should be provided.

Recommendation: The recommended note should read similar to the follow: ALL FENCING SHALL BE LOCATED OUTSIDE OF THE STRUCTURAL ROOT ZONE OF TREES. THE STRUCTURAL ROOT ZONE IS DEFINED AS A RADIUS OF THREE (3) FEET FROM THE BASE OF THE TREE FOR EACH FOOT OF TRUNK DIAMETER MEASURED AT 4.5 FEET ABOVE EXISTING GRADE.

2. **Comment:** Installation will require excavation that could potentially result in root loss and/or damage.

Recommendation: Where fencing is located within the critical root zone of trees, details of sign installation to show proximity to the tree should be provided. The critical root zone is defined as an area around the tree having a radius of one (1) foot for each inch of trunk diameter measured at 4.5 feet above grade. Additionally a note should be provided that states: WHERE ROOTS ONE INCH OR GREAT IN DIAMETER ARE ENCOUNTERED DURING ANY EXCAVATION, THEY SHALL BE CUT CLEANLY AT THE LIMITS OF THE EXCAVATION. CUTS SHALL BE MADE USING A HANDSAW OR LOPPING SHEARS.

If there are any questions, please contact me at (703)324-1770.

SW/
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8-006 General Standards

In addition to the specific standards set forth hereinafter with regard to particular special permit uses, all special permit uses shall satisfy the following general standards:

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

8-903 Standards for All Group 9 Uses

In addition to the general standards set forth in Sect. 006 above, all Group 9 special permit uses shall satisfy the following standards:

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.
2. All uses shall comply with the performance standards specified for the zoning district in which located.
3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

8-923 *Provisions for Increase in Fence and/or Wall Height in Any Front Yard*

The BZA may approve a special permit to allow an increase in fence and/or wall height in any front yard subject to all of the following:

1. The maximum fence and/or wall height shall not exceed six (6) feet and such fence and/or wall shall not be eligible for an increase in fence and/or wall height pursuant to Par. 3I of Sect. 10-104.
2. The fence and/or wall shall meet the sight distance requirements contained in Sect. 2-505.
3. The BZA shall determine that the proposed fence and/or wall height increase is warranted based upon such factors to include, but not limited to, the orientation and location of the principal structure on the lot, the orientation and location of nearby off-site structures, topography of the lot, presence of multiple front yards, and concerns related to safety and/or noise.
4. The BZA shall determine that the proposed fence and/or wall height increase will be in character with the existing on-site development and will be harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, scale and any historic designations.
5. The BZA shall determine that the proposed fence and/or wall height increase shall not adversely impact the use and/or enjoyment of other properties in the immediate vicinity.
6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including but not limited to imposition of landscaping or fence and/or wall design requirements.
7. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines, and of each zoning district.

- B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. The location, dimension and height of any building or structure, to include existing or proposed fences and/or walls.
 - E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of a well and/or septic field.
 - I. If applicable, existing gross floor area and floor area ratio.
 - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
 - K. The location, type and height of any existing and proposed landscaping and screening.
 - L. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
 - M. Seal and signature of professional person certifying the plat.
8. Architectural depictions of the proposed fence and/or wall to include height, building materials and any associated landscaping shall be provided.

18-404 Required Standards for Variances

To grant a variance the BZA shall make specific findings based on the evidence before it that the application satisfies all of the following enumerated requirements:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property; or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.

18-405 Conditions

Upon a determination by the BZA that the applicant has satisfied the requirements for a variance as set forth in Sect. 404 above, the BZA shall then determine the minimum variance that would afford relief. In authorizing such variance the BZA may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be met.